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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,897	06/25/2001	William L. Elderson	010214	9340

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/888,897

Applicant(s)
WILLIAM L. ELDERSON

Examiner
YVONNE M. HORTON

Art Unit
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/3/02 and 11/18/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-24, 27-37, 42, and 43 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-24, 27-37, 42, and 43 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 and 5 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Applicant's election of Group I - A stud Bridging system in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 4-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, recites that a notch is formed in the bracket. However, the specification and drawings clearly show the notch as being formed in the bridging member. Thus, until further clarification, the claims have been examined as the notch being in the bridging member and not the bracket.

Also, claim 1, last line, recites that the notch is at an incline to the "longitudinal axis thereof". However, although the claim defines a longitudinal axis to the bridging member, it is

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not clear if "thereof" is referring to the longitudinal axis of the bridging member or another element of the invention. Until further clarification, the notch is being examined as being at an angle to the longitudinal axis of the bridging member.

In claim 4, it is not clear which direction is "inward from the perpendicular. Clarification is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1,6-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #4,448,004 to THORSELL in view of US Patent #5,784,850 to ELDERSON.

THORSELL discloses the use of a stud bridging system including a bridging member (2) having a longitudinal axis (LA), a bracket (10) attachable to the bridging member. THORSELL

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discloses the basic claimed structure except the bridging member does not have notches formed therein. ELDERSON teaches that it is known in the art to provide a bridging member (16) with notches (26a-e). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bridging member of THORSELL with the notches of ELDERSON in order to facilitate easier insertion and attachment of the bridging member to the studs. The notches or slots eliminated any additional material from the bridging member rubbing against the stud thereby hindering insertion of the bridging member therein. Further, the notches (26a-e) extend at an angle of at least 15 degrees, 45 degrees or 60 degrees, since the angle of the bridging member is 30 degrees, 90 degrees or 120 degrees. In regards to claim 6, all of the notches incline in the same direction. In reference to claims 7 and 8, ELDERSON is silent with regards to exact dimensions of the width of his notches. He does; however, teach that the width of his notches should be slightly less than the thickness of the web of the stud member. Thus, it would have been an obvious matter of design choice to select the width of the notch to depend upon the thickness of the stud. The thickness of the stud depends upon the type of material or gauge steel used to form the stud and the environment in which the stud is being used. Areas where there are less forces applied may require a lighter gauge steel; whereas, areas known for heavier applied forces would require a larger gauge steel. Regarding claims 9 and 10, the notches (26a-e) have parallel sides and the sides are straight, see figure 4 of ELDERSON. In reference to claim 11, THORSELL is silent with regards to the gauge steel used to form his bridging member. ELDERSON; however, teaches the use of 20 gauge steel. The selection of a

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know material on the basis of its suitability for the use intended is an obvious matter of design choice. Again, heavier or lighter gauge steel is selected according to where and how the structure is intended to exist. Regarding claims 12 and 13, the bridging member (2) has a v-shaped cross section and the bracket (10) also has a v-shaped cross section. In reference to claim 16, the bracket (10) is attached by a removable fastener (4).

Allowable Subject Matter

7. Claims 4,5,14,15 and 17-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
8. Claims 21-24,27-37 and 42-43 are allowed.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-2909.



YMH

January 27, 2003